

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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MICHAEL MITCHELL,

Plaintiff,

**MEMORANDUM & ORDER**

-against-

1:23-CV-02211 (NRM)(CLP)

U.S. PROBATION DEPARTMENT,

Defendant.

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NINA R. MORRISON, United States District Judge:

Plaintiff Michael Mitchell (hereinafter “Plaintiff”) filed the above-captioned *pro se* complaint on March 3, 2023. ECF No. 1. By Order entered May 15, 2023, the Court granted Plaintiff’s request to proceed *in forma pauperis* and ordered him to Show Cause why the complaint should not be dismissed for lack of subject matter jurisdiction and requested that the parties advise the Court should the action become moot. ECF No. 10. To date, Plaintiff has not filed a substantive response to the Court’s Order, and it appears that the relief he originally sought has been granted. Accordingly, for the reasons that follow, the action is hereby dismissed.

Plaintiff was serving a term of supervised release following his 2004 conviction and sentence in *United States v. Mitchell*, 04-cr-00497-NG, when he was arrested in 2010. *See* ECF Nos. 8, 12. Based on the events giving rise to this arrest, Plaintiff was subsequently convicted in state court and sentenced to 25 years to life in prison. ECF Nos. 8, 12. Plaintiff is currently in state custody serving this sentence. *See* ECF No. 8 at 1 n.2. As a result of this arrest, the United States Probation Department filed a Violation of Supervised Release (“VOSR”) report and obtained a warrant, which was filed as a detainer while Plaintiff remained in state custody. ECF No. 12 at 1.

In the instant civil action, Plaintiff asked this Court to order the United States Probation Department to provide him with a copy of his VOSR report and provide a detailed index,

itemization, and justification for its prior denial of his request under the Freedom of Information Act (“FOIA”) pursuant to *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). ECF No. 1 at 2. On May 5, 2023, the Government submitted a letter advising that it had requested that Plaintiff be produced in federal court and that if Plaintiff was ordered to appear, his counsel would have the opportunity to request a copy of his VOSR. ECF No. 8 at 2.

On June 28, 2023, the Government submitted a letter representing that Plaintiff had been produced in federal court and appeared for an arraignment on the VOSR and been provided with a copy of his VOSR. ECF No. 12 at 2.

As the Court explained in the May 15, 2023 Order, ECF No. 10, the Probation Department is an administrative unit of the judiciary and thus is excluded from the definition of “agencies” that are subject to the FOIA disclosure requirements. *See* 5 U.S.C. § 551(1) (“‘[A]gency’ means each authority of the Government of the United States, . . . but does not include . . . the courts of the United States”); *Dorman v. Higgins*, 821 F.2d 133, 137 (2d Cir. 1987) (“[I]t is clear that, in preparing presentence reports, a federal probation officer acts as an arm of the court . . . .”); *Pena v. U.S. Dep’t of Prob.*, No. 06 CV 2481 (NG)(LB), 2006 WL 2806383, at \*1 (E.D.N.Y. Sept. 28, 2006) (dismissing FOIA claim because “[t]he Probation Department . . . is not subject to the disclosure obligations of FOIA”). Moreover, Plaintiff has now been provided with a copy of the VOSR—*i.e.*, he has now obtained the relief that he sought in his initial complaint. Therefore, his request for a copy is now moot.

Accordingly, the Complaint is dismissed for lack of subject matter jurisdiction and because it is moot. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of any appeal. *See Coppedge v. United States*, 369 U.S. 438, 444–45 (1962).

The Clerk of Court is respectfully directed to enter judgment and close this case and send a copy of this Memorandum and Order to Plaintiff.

SO ORDERED.

/s/ NRM  
NINA R. MORRISON  
United States District Judge

Dated: October 24, 2023  
Brooklyn, New York